80-384

Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE,

Petitioner,

v.

SAMUEL UNGER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

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QUESTIONS PRESENTED

In the action below SAMUEL UNGER brought suit seeking to prevent MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE from participating in a "non-partisan" school board election. Despite petitioner's objection, at every stage of the proceedings, that such relief would violate its rights of free speech and association guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, the California Court of Appeal held that the Central Committee in particular, and California political parties in general, were prohibited by Article II, Section 6 of the California Constitution from endorsing, supporting or opposing candidates in any election for a "nonpartisan" office.

The question is thus presented:

Can a State Constitution providing for "nonpartisan" offices foreclose the exercise of petitioner's basic constitutional rights of free speech, assembly and political association? Or stated somewhat more generally, in the light of the First Amendment can partisan political activity be prohibited in local elections defined as nonpartisan?

Note: Parties to Action Below

In the action below, the parties were Samuel Unger, petitioner, Marin County Democratic Central Committee, originally respondent and later called real party in interest, and Marin County Superior Court, added as an additional respondent.

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FIRST APPELLATE DISTRICT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the California Court of Appeal, First Appellate District, in the case of Samuel Unger v. Marin County Democratic Central Committee, 1 Civil 47927 (Superior Court

No. 95238). The California Supreme Court denied a hearing in this case on May 22, 1980.

OPINIONS BELOW

The opinion of the California Court of Appeal and its modified opinion have not yet been printed.

JURISDICTION

The original opinion of the California Court of Appeal, First Appellate District, Division II, was filed February 27, 1980 and a copy thereof is appended to this petition (Appendix 1). On the motion of petitioner for rehearing the Court of Appeal filed a modification of opinion on March 28, 1980. A copy thereof is appended to this petition (Appendix 2). Petitioner's petition for hearing in the California

Supreme Court was filed April 7, 1980. By its order the Supreme Court, on April 24, 1980, extended its time to grant or deny a hearing in the case. The Supreme Court issued its order denying a hearing on May 22, 1980. A copy of this order is also appended to this petition (Appendix 3).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

In the action below SAMUEL UNGER brought suit seeking to prevent MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE from participating in a "non-partisan" school board election. Despite petitioner's objection, at every stage of the proceedings, that such relief would violate its rights of free speech and association guaranteed by the First and Fourteenth Amendments to the Constitution of

the United States, the California Court of Appeal held that the Central Committee in particular, and California political parties in general, were prohibited by Article II, Section 6 of the California Constitution from endorsing, supporting or opposing candidates in any election for a "nonpartisan" office.

The question is thus presented: Can a State Constitution providing for "nonpartisan" offices foreclose the exercise of petitioner's basic constitutional rights of free speech, assembly and political association? Or stated somewhat more generally, in the light of the First Amendment can partisan political activity be prohibited in local elections defined as nonpartisan?

CONSTITUTIONAL PROVISIONS INVOLVED

Involved in this case are the First Amendment and the Fourteenth Amendment

to the Constitution of the United States, and Article II, Section 6 of the California Constitution (Deering's Constitution Annotated, Volume I, Supp., p. 131). Article II, Section 6 was formerly Section 5, adopted November 7, 1972; renumbered June 8, 1976.

STATEMENT

SAMUEL UNGER, petitioner below, filed a petition in Marin County Superior Court seeking an injunction and writ of mandamus directed to the MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE (county political committee), seeking to restrain it from endorsing, promoting, or financially supporting candidates for election to the Marin Community College District Governing Board. Insofar as is here relevant UNGER relied on California Constitution, Article II, Section 6, which in its entirety reads:

"Judicial, school, county, and city offices shall be non-partisan."

FACTS

The relevant facts are undisputed. UNGER was a duly qualified candidate for election to the governing board of the Marin Community College District at the November 6, 1979 election. MARIN DEMOCRATIC CENTRAL COMMITTEE invited all Democratic candidates to a meeting to seek the endorsement of the county committee and apply for financial assistance. UNGER did not attend. The committee did endorse four Democrats, publicly announced the endorsements, and planned to make financial contributions to the candidates endorsed. County committees in the San Francisco Bay Area have been openly endorsing and supporting candidates for nonpartisan offices for many years.

UNGER'S complaint set out most of the foregoing facts. A demurrer filed by the Central Committee, supported by a brief based in part on the protections of the First Amendment to the United States Constitution, was granted without leave to amend.

UNGER next filed a petition for writ of mandamus in the Court of Appeal for the State of California, First Appellate District, which was denied on October 10, 1979. UNGER then petitioned the Supreme Court of California which on October 31, 1979, granted a petition for hearing, transferred the case to the Supreme Court, and retransferred it to the Court of Appeal with directions to issue an alternative writ of mandamus to be heard before that court. Both in the Supreme Court and the Court of Appeal petitioner continued to urge its rights under the First Amendment to the Consti-

tution of the United States (not to mention its rights under the California Constitution). This material is found in the memo at Pages 4 - 6, with citations from federal cases and a quotation from The New York Times Company v. Sullivan, 376 U.S. 254, 84 S. Ct. 710.

Again, in the petition for rehearing filed by petitioner Central Committee, its entire argument (pp. 3 - 7) was that petitioner's rights to political association and free speech are protected both by the First and Fourteenth Amendments to the United States Constitution as well as by the California Constitution.

Finally, following the modification of the judgment by the Court of Appeal, in its petition to the California Supreme Court for appellate review, petitioner argued throughout (pp. 4 - 16) that First Amendment rights could not be abridged by the California

Constitution, citing many cases of this Court.

In its original decision the California Court of Appeal responded to petitioner's assertion of First Amendment rights very briefly:

> "Former Article II, section 2-1/2, in which the 'Truth In Endorsements Law' finds its genesis, expressly empowered the Legislature to regulate the manner in which political parties could participate in the direct primary election. (Cal. Democratic Council v. Arneberg (1965) 233 Cal. App. 2d 425.) Such regulation does not infringe the right of suffrage or violate the right of free speech. (Cal. Democratic Council v. Arnebergh, supra, at p. 432.)"

Following the Central Committee's petition for rehearing, the Court of Appeal revised its language to read as follows:

> "Former Article II, section 2-1/2, in which the 'Truth in Endorsements Law' finds its genesis, expressly empowered the Legislature to regulate the manner in which political parties could participate in the direct primary

> election. (Cal. Democratic Council v. Arnebergh (1965) 233 Cal. App. 2d 425.) Reasonable regulation pursuant to such a constitutional grant in order to prevent evils which formerly had been prevalent does not infringe on freedom of speech or association guaranteed by the Federal and State constitutions. (Cal. Democratic Council v. Arnebergh, supra, at p. 429: Petition for hrg. denied; Appeal dismissed for want of a substantial Federal question, 382 U.S. 202), nor does such regulation, even to the extent that it excludes parties and individuals participating in primary elections under certain conditions, restrict the constitutional right of suffrage. (Communist Party v. Peek (1942) 20 Cal. 2d 536, 544-545.) (Footnote omitted.)

As noted above, following the modification of opinion by the Court of Appeal petitioner filed a sixteen page brief with the Supreme Court requesting appellate review. The entire brief, except for a brief statement of facts, was an attempt to vindicate petitioner's rights under the First and Fourteenth

Amendments to the United States Constitution, but a hearing was denied.

REASONS FOR ALLOWING THE WRIT

Petitioner's basic and inalienable rights under the First Amendment to the United States Constitution have been partially destroyed by a California decision that petitioner, as a county central committee of a political party (and in fact political parties in general) may not endorse, support or oppose candidates in any election for "non-partisan offices". Petitioner contends that its rights under the First Amendment are protected against state action by the Fourteenth Amendment to the United States Constitution and that the California constitutional provision relied upon by the California Court of Appeal, as interpreted, is repugnant to the United States Constitution within the meaning

of 28 U.S.C. 1257(3).

Petitioner further contends that the California Court of Appeal has decided a federal question of substance not heretofore determined by the Supreme Court of the United States, and has decided the questions in a way which is not in accord with applicable decisions of this Court.

FIRST AMENDMENT RIGHTS ARE BASIC AND ESSENTIAL LIBERTIES AND ARE PROTECTED BY THE FOURTEENTH AMENDMENT AGAINST UNCONSTITUTIONAL STATE ACTION.

Abington School Dist. v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900; NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163; Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303; NAACP v. Button, 371 U.S. 415, 83 S. Ct. 328.

THE FIRST AMENDMENT TO THE

UNITED STATES CONSTITUTION PROTECTS FREEDOM OF ASSOCIATION FOR THE ADVANCEMENT OF POLITICAL BELIEFS.

NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163; Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5; Buckley v. Valleo, 424 U.S. 1, 96 S.Cto 612; Bates v. City of Little Rock, 361 U.S. 516, 80 S.Ct. 412; New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710; NAACP v. Button, 371 U.S. 415, 83 S. Ct. 328.

MOREOVER, THESE CONSTITUTIONAL GUARANTEES HAVE THEIR FULLEST AND MOST URGENT APPLICATION PRECISELY IN THE CONDUCT OF CAMPAIGNS FOR POLITICAL OFFICE.

Monitor Patriot Co. v. Roy, 401 U.S. 265, 91 S. Ct. 62; Buckley v. Valleo, 424 U.S. 1, 96 S.Ct. 612. Ir Buckley this Court said:

> "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the

> system of government established by our Constitution . . .
>
> In the free society ordained by our Constitution it is not the government but the people - individually as citizens and candidates and collectively as associations - who must retain control over the quantity and range of debate on public issues in a political campaign."

It follows that a decision that political parties may not support or oppose candidates for office is prima facie inconsistent with and violative of rights secured by the First and Fourteenth Amendments.

THE RIGHT TO ASSOCIATION WITH A POLITICAL PARTY OF ONE'S CHOICE IS AN INTEGRAL PART OF THE BASIC RIGHT OF POLITICAL ASSOCIATION PROTECTED BY THE FOURTEENTH AMENDMENT, AND ANY INTERFERENCE WITH THE FREEDOM OF A POLITICAL PARTY IS SIMULTANEOUSLY AN INTERFERENCE WITH ITS ADHERENTS.

Cousins v. Wigoda, 419 U.S. 477, 95 S.Ct. 541; Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303; NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328.

CONVERSELY, ORGANIZATIONS AS WELL AS INDIVIDUALS ARE ENTITLED TO EXERCISE FIRST AMENDMENT RIGHTS.

First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407; Police Department of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct. 2286.

MOREOEVER, IT IS UNCONSTITUTIONAL TO IMPOSE STRICTER FREE SPEECH STANDARDS ON PUBLIC OFFICIALS THAN ON THE GENERAL PUBLIC.

Bond v. Floyd, 385 U.S. 116, 87 S. Ct. 339.

STIFLING OF POLITICAL SPEECH AND OPINION IS ALSO A VIOLATION OF THE RIGHT OF THE GENERAL PUBLIC TO RECEIVE INFORMATION, WHICH IS PROTECTED BY THE FIRST AMENDMENT EQUALLY WITH THE RIGHT

TO SPEAK.

Virginia State Board of Pharmacy v. Virginia Citizens' Consumer Council, 425 U.S. 748, 96 S.Ct. 1818; Redline Broadcasting Co. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794; Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678; Marsh v. Alabama, 326 U.S. 501, 66 S. Ct. 276.

. ONLY THE GRAVEST ABUSES, ENDANGERING PARAMOUNT INTERESTS, JUSTIFY ANY LIMITATION ON THE RIGHT OF FREE SPEECH AND ASSOCIATION. A SIGNIFICANT ENCROACHMENT UPON ASSOCIATIONAL FREEDOM CANNOT BE JUSTIFIED UPON A MERE SHOWING OF A LEGITIMATE STATE INTEREST.

Thomas v. Collins, 323 U.S. 516; First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407; Cohen v. State of California, 403 U.S. 15, 91 S.Ct. 1780; Buckley v. Valleo, 424 U.S. 1, 96 S.Ct. 612; NAACP v.

Alabama, 357 U.S. 449, 78 S.Ct. 1163

With regard to its prohibition against partisan speech, the California Court of Appeal said that reasonable regulation pursuant to a constitutional grant "in order to prevent evils which formerly had been prevalent" does not infringe on freedom of speech or association. But since the entire case was a matter of pleading only, with no evidence taken, the only indication of "evils" was the court's own reference to the case of Moon v. Halverson, 206 Minn. 331, 288 N.W. 579, where it is mentioned that the purpose of nonpartisan elections is to "lift judgeships above sordid political influence and to free the candidate from obligation to a party."

Laudable as such aims may be they cannot be secured by abridgment of First Amendment rights. This Court stated in Buckley v. Valleo, 424 U.S. 1, 96 S.Ct.

612, "discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government establisned by our constitution." And it is submitted that for the court to assert that the party system is not an integral part of the elective machinery in a nonpartisan election is simply to beg the very question at issue. To justify regulations by the phrase such as "evils of partisanship" is insufficient. The state cannot foreclose exercise of constitutional rights by mere labels. NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328.

No decision of this Court can be found concerning prohibition of free speech in "nonpartisan" elections. But see Abrams v. Reno, U.S.D.C., Florida, 452 F. Supp. 1166, involving a Florida statute prohibiting state and county political committees from endorsing or

supporting candidates of their own party in primary elections. The District Court pointed out that this Court has held several times that restrictions on advocacy of election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment, and held that the Florida statute was unconstitutional. In the case below the California Court of Appeal acknowledged Abrams v. Reno in a footnote but said it was not bound by the decision of a lower federal court.

EVEN CONSTITUTIONALLY PERMISSIBLE RESTRICTIONS ON THE EXERCISE OF FIRST AMENDMENT RIGHTS MUST BE DRAWN WITH NARROW SPECIFICITY.

NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328; Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900. There may be ways, such as prohibiting the use of party labels on the ballot, to prop-

erly carry out the intention of Article II, Section 6 of the California Constitution. But the prohibition set forth in the Court of Appeal's interpretation of the constitutional section is a pervasive encroachment on First Amendment rights.

Finally, the section itself is vague and ambiguous. The section provides for nonpartisan "offices" and does not mention elections. The California Court of Appeal says that this section is mandatory, prohibitory and self-executing, but there is no language of prohibition in this section and, petitioner submits, no language whatsoever on which the State Court can reasonably base its deprivation of fundamental.

CONCLUSION

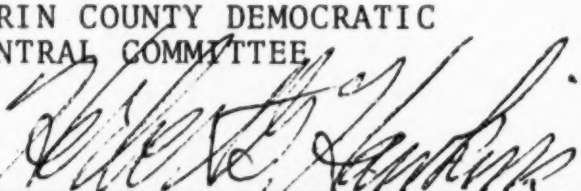
Since the California Supreme Court has refused to grant a hearing, this

Court is the court of last resort for all political parties and associations in the State of California, who need to have vindicated their rights of free speech and political association under the First Amendment to the Constitution of the United States. Petitioner submits that Article II, Section 6 of the California Constitution, as interpreted by the Court of Appeal of California, First Appellate District, is an intrusive and unjustified and unreasonable abridgment of First Amendment rights, and the interpretation should be held unconstitutional by this Court

Petitioner prays that a Writ of Certiorari issue.

Respectfully,

MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE

By 

Herbert G. Hawkins
Attorney for Petitioner

CERTIFIED FOR PUBLICATION ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

F I L E D
Feb 27 1980
Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk
By _____ Deputy

SAMUEL UNGER,

Petitioner,

V.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MARIN,

Respondent.

1 Civil 47927

Sup.Ct.No. 95238

MARIN COUNTY DEMOCRATIC COMMITTEE, also known as DEMOCRATIC CENTRAL COMMITTEE/MARIN, a county central committee,

Real Party in Interest.

In this extraordinary writ proceeding, we consider whether Article II,

(Appendix 1)

section 6 of the California Constitution prohibits a county central committee of a political party from endorsing, supporting or opposing a candidate for a school office.

Article II, section 6 of the California Constitution provides: "Judicial, school, county and city offices shall be nonpartisan."

The salient facts are undisputed. Petitioner Samuel Unger is a resident and registered voter of the County of Marin and was a duly qualified candidate on the ballot for election as member of the governing board of the Marin County Community College District at the November 6, 1979 election. On or about September 1, 1979, real party in interest Marin County Democratic Central Committee, a county central committee created pursuant to Elections Code section

8820, et seq., invited all registered Democrats who were candidates for the governing board of the district to attend a September 6, 1979 meeting of the county central committee to seek the endorsement of the county central committee for the office and to apply for financial assistance. Petitioner neither attended the meeting nor sought the endorsement or assistance of the county central committee. On September 6, 1979, the county central committee did in fact endorse four registered Democrats (out of 6 registered Democrats, 4 registered Republicans and 3 registered Independents) for the vacancies on the governing board to be filled at the November 6, 1979 election. The county central committee subsequently sent letters to unsuccessful applicants, publicly announced the endorsement of the four

candidates, and planned to make "small" financial contributions to the candidates it had endorsed.[1]

On September 12, 1979, petitioner filed a verified petition in respondent court seeking relief by mandate or by injunction to enjoin the county central committee from endorsing or supporting candidates for the nonpartisan office of member of the governing board of the district in the forthcoming November election and in all future elections for such nonpartisan office on the ground that the county central committee's

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[1] Section 8500, et seq. of the Elections Code contains provisions governing the organization, operation and functions of that political party known as the Democratic Party of California. Similar provisions exist for the Republican Party of California (Section 9000, et seq.), the American Independent Party of California (section 9600, et seq.) and the Peace and Freedom Party of California (Section 9750, et seq.)

activities violated Article II, section 6 of the California Constitution and section 37 of the Elections Code.[2] Petitioner alleged that the conduct of the county central committee was causing great and irreparable injury to him in his capacity as resident, registered voter and candidate for the governing board of the district, an injury which was continuing and for which he had no plain, adequate or speedy remedy other than in the proceeding instituted by him.

On September 27, 1979, respondent court sustained a demurrer to the action without leave to amend and ordered that the action be

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[2] Section 37 of the Elections Code provides: "'Nonpartisan office' means an office for which no party may nominate a candidate. Judicial, school, county and municipal offices are nonpartisan offices

dismissed.[3] Although the order of dismissal is a final judgment (Code Civ. Proc. Section 5813) which is appealable (Code Civ. Proc. Section 904.9), petitioner sought review by extraordinary writ, contending that appeal was not an adequate remedy in that he needed relief prior to the November 6, 1979 election. The issue of the absence of an adequate remedy in the ordinary course of law has been determined by the Supreme Court in its order directing the issuance of an alternative writ of mandate to be heard before this court. (Brown v. Superior Court (1971) 5 Cal.3d 509, 515.)

In its return to the alternative writ, real party does not deny that it had engaged in the conduct objected to by

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[3] The demurrer was based on two grounds: (1) that the complaint did not state a cause of action, and (2) that the complaint was uncertain.

petitioner; real party contends that its conduct was in conformance with accepted practice it believed to be proper. Real party has submitted declarations attesting to the fact that the county central committees have been openly endorsing and supporting candidates for nonpartisan office for many years. The declarations show that the practice is widespread in the San Francisco Bay Area.[4]

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[4] The declaration of Agar Jaicks, chairman of the Democratic Central Committee for the City and County of San Francisco avers that the San Francisco central committee has been endorsing and actively supporting candidates for the nonpartisan offices of mayor, board of supervisor, board of education, community college board and judge since 1967. The declaration of Sal Bianco, chairman of the Santa Clara County Democratic Central Committee avers that the Santa Clara County central committee has been endorsing candidates for nonpartisan offices since 1972. The declaration of Mary Warren, chairperson of the Alameda County Democratic Central Committee avers that over the past five years the Alameda County central committee has endorsed at least 100 candidates for the nonpartisan offices of supervisor, city council member, school board member and judge.

Before examining the provisions of Article II, section 6 of the Constitution (added to the Constitution as Section 5 in 1972 and renumbered Section 6 in 1976), we note that the Constitution furnishes a rule for its own construction. That rule, unchanged since its enactment in 1879, is that constitutional provisions are "mandatory and prohibitory, unless by express words they are declared to be otherwise." (Art. I, Section 26, Cal. Const.)[5] The rule applies to all sections of the Constitution alike and is binding upon all branches of the state government, including this court, in its construction of the provisions of Article II, section 6. (State Board of Education v. Levit (1959) 52 Cal.2d 441, 460-461.)

[5] Present section 26 of Article I appeared as section 22 thereof in the Constitution of 1879. It was repealed and re-adopted, as section 28 but otherwise unchanged, by vote of the people on November 5, 1970; on June 8, 1976 it was renumbered as section 26.

Section 26 of Article I "'not only commands that its provisions shall be obeyed, but that disobedience of them is prohibited. Under the stress of this rule, it is the duty of this court to give effect to every clause and word of the constitution, and to take care that it shall not be frittered away by subtle or refined or ingenious speculation. The people use plain language in their organic law to express their intent in language,which cannot be misunderstood, and we must hold that they meant what they said .' . . . (Citation.)" (State Board of Education v. Levit, supra, at p. 460, emphasis added.)

Applying the foregoing rule of construction, the language of the constitutional provision is plain, explicit and free from ambiguity. "There is no necessity or opportunity to resort to jud-

icial construction to ascertain its meaning. When the facts in any particular case come within its provisions it is the duty of the court to apply and enforce it." (French v. Jordan (1946) 28 Cal.2d 765, 767.)

It cannot be denied that the office for which petitioner was a candidate was a "school" office within the meaning of the constitutional provision. "Nonpartisan" is defined as "not affiliated with or committed to the support of a particular political party: politically independent . . . viewing matters or policies without party bias . . . held or organized with all party designations or emblems absent from the ballot . . . composed, appointed, or elected without regard to the political party affiliations of members . . ." (Webster's New Int. Dictionary, 3d ed., 1965.)

In light of the foregoing, we hold that the explicit and unqualified language of Article II, section 6 prohibits a political party and, in particular, a county central committee of a political party, from endorsing, supporting, or opposing a candidate for the office of governing member of the board of a community college district, a nonpartisan school office within the meaning of the constitutional provision, in any election.[6]

Real party acknowledges that it is prohibited by the "Truth in Endorsements Law" (Elec. Code Section 11700, et seq.) from endorsing, supporting, or opposing any candidate for nomination for partisan

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[6] Section 19 of the Elections Code provides that "'Election' means any election, including a primary which is provided for under the provisions of this code.

office in the direct primary election, but suggests that if the doctrine of expressio unius est exclusio alterius is applied, section 11702 constitutes the sole limitation upon its activities, and that it may participate in nonpartisan elections.[7]

We do not agree. Former Article II, section 2-1/2, in which the "Truth in Endorsements Law" finds its genesis, expressly empowered the Legislature to reg-

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[7] Section 11702 of the Elections Code provides: "The state convention, state central committe, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election." The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." Any registered voter may apply to the superior court for a restraining order or injunction in the event of a violation of this chapter. (Elec. Code, Section 11706.)

ulate the manner in which political parties could participate in the direct primary election. (Cal. Democratic Council v. Arnebergh (1965) 233 Cal. App. 2d 425.)[8] Such regulation does not infringe the right of suffrage or violate the right of free speech. (Cal. Democratic Council v. Arnebergh, supra, at p. 432.) The provisions of Article II, section 6 of the Constitution, on the other hand, are self-executing; these provisions will be given effect without implementing legislation. (Chesney v.

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[8] In 1963, at the time the "Truth in Endorsements Law" was enacted, former Article II, section 2-1/2 provided that "(t)he legislature shall have the power . . . to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in any . . . primary election." Former Article II, section 2-1/2 was repealed November 7, 1972, and superseded by Article II, section 5 which provides in relevant part, "the Legislature shall provide for primary elections for partisan offices."

Byram (1950) 15 Cal. 2d 460, 4603; Taylor v. Madigan (1975) 53 Cal.App.3d 943, 950-952.)[9] Although the legislature may enact legislation to implement a self-executing provision of the Constitution (Chesney v. Byram, supra, at p. 463, "'(i)t is not and will not be questioned but that . . . it is not within the legislative power, either by its silence or by direct enactment, to modify, curtail or abridge this constitutional grant.' (Citations.)" (Flood v. Riggs (1978) 80 Cal.App.3d 138, 154.)

Legislative inaction can in no manner qualify constitutional provisions capable of self-execution whose language ade-

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[9] A constitutional provision may be said to be self-executing "if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced." (Chesney v. Byram, supra, at p. 462; Taylor v. Madigan, supra, at p. 950, fn. 3.)

quately sets forth the rule through which the duty imposed may be enforced. (Flood v. Riggs, supra, at p. 155.) Moreover, the constitutional grant constitutes a restraint upon the law-making powers of the state, and legislative enactments contrary to its provisions are void. (Sail'er Inn., Inc. v. Kirby (1975) 5 Cal.3d 1, 8.)

We also disapprove the opinion of the Attorney General relied upon by real party (59 Ops. Atty. Gen. 60 issued on January 2, 1976) to the extent that it is inconsistent with the constitutional mandate herein expressed. Although opinions of the attorney general, who is charged with the duty to enforce the law, are entitled to great weight, the opinions of the attorney general are not controlling as to the meaning of a constitutional provision or statute. (Smith v.

Municipal Court (1959) 167 Cal.App.2d 534, 539.)

Because this case poses a question which is of broad public interest, is likely to recur, and should receive uniform resolution throughout the state, we have undertaken to resolve the issue raised by petitioner even though an event occurring during its pendencey would normally render the matter moot. (Zeilenga v. Nelson (1971) 4 Cal.3d 716, 719-720.) Although we have concluded that petitioner's complaint stated a proper cause against the demurrer, it is obvious that by reason of the election of November 6, 1979 having taken place, this court cannot grant the relief sought by petitioner (Kagan v. Kearney (1978) 85 Cal.App.3d 1010, 1014; Gold v. Los Angeles Democratic League (1975) 49 Cal.App.3d 365, 372), and we deem it unlikely that real party,

having been apprised of this decision, will repeat the conduct which precipitated this proceeding.

The alternative writ, having served its purpose, is discharged, and the peremptory writ is denied. All other relief sought by petitioner is denied.

CERTIFIED FOR PUBLICATION.

Miller, J.

WE CONCUR:

Taylor, P.J.

Rouse, J.

CERTIFIED FOR PUBLICATION COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SAMUEL UNGER, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MARIN, Respondent.	1 Civil 47927 Sup.Ct.No. 95238 MODIFICATION OF OPINION
MARIN COUNTY DEMOCRATIC COMMITTEE, also known as DEMOCRATIC CENTRAL COMMITTEE/MARIN, a county central committee Real Party in Interest	

BY THE COURT:

The opinion filed on February 27, 1980 is modified as follows:

On page 2, footnote designation 1,

(Appendix 2)

appearing after the word "endorsed", which is the last word in the body, has been moved to appear after the word "assistance", on line 12.

On page 8, lines 6 through 9 are deleted and in their place is inserted the following:

Reasonable regulation pursuant to such a constitutional grant in order to prevent evils which formerly had been prevalent does not infringe on freedom of speech or association guaranteed by the federal and state Constitutions (Cal. Democratic Council v. Arnebergh, supra, at p. 429; petition for hrg. denied; appeal dismissed for want of a substantial federal question, 382 U.S. 202), nor does such regulation, even to the extent that it excludes parties and individuals from participating in primary elections under certain conditions, restrict the con-

stitutional right of suffrage. (Communist Party v. Peek (1942) 20 Cal.2d 536, 544-545.)[9]

In nonpartisan election, "the party system is not an integral part of the elective machinery and the individual's right of suffrage is in no way impaired by the fact that he cannot exercise his right through a party organization". (Communist Pary v. Peek, supra, at p. 544.) The evils of partisanship in certain offices are well illustrated in Moon v. Halverson (1939) 206 Minn. 331, 288 N. W. 579, 581-582 (concurring opinion of Loring, J.). No constitutional provision

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[9] Real party has acknowledged that it is bound by section 11702 of the Elections Code (infra, at p. ___, fn. 7), which is not here under attack (see People v. Crutcher (1968) 262 Cal.App.2d 750, 752-753, but see Abrams v. Reno (1978) 452 Fed. Supp. 1166, a decision of a lower federal court by which this court is not bound (People v. Bradley (1969) 1 Cal.3d 80, 86)).

was at issue in Moon; here by constitutional command, the People have directed that certain offices shall be nonpartisan. The provisions of Article II, section 6, unlike the provisions of former Article II, section 2-1/2 are self-

On page 8, existing footnote 9 is renumbered footnote 10.

The petition for rehearing is denied.

Dated: Mar 28 1980

CERTIFIED FOR PUBLICATION

Taylor, P.J.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

MAY 22 1980

I have this day filed Order

HEARING DENIED

In re: 1 Civ. *No.* 47927

Unger

vs.

Marin County Democratic Central Committee

Respectfully,

G. E. BISHEL
Clerk

65953-877 11-78 4M OSP

(Appendix 3)